

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ELLA CARD, ET AL.,	:	
	:	
Plaintiffs,	:	Civ. Action No.:
	:	1:21-CV-01288-WIA
-against-	:	(Arbuckle, M.J.)
	:	
NICHOLAS TURNER, ET AL.,	:	--Electronically Filed--
	:	
Defendants.	:	

**[PROPOSED] ORDER GRANTING
UFT DEFENDANT’S MOTION TO DISMISS**

Defendant United Federation of Teachers, Local 2, AFT, AFL-CIO (“UFT Defendant” or “UFT”) having made an application pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure to dismiss Plaintiffs’ Amended Complaint as to UFT Defendant:

NOW, upon consideration of UFT Defendant’s Motion to Dismiss and Memorandum of Law in Support of Its Motion to Dismiss, dated October 27, 2021, and upon all the other papers and proceedings herein, it is hereby

ORDERED that UFT Defendant’s Motion is granted. The Amended Complaint is DISMISSED WITH PREJUDICE.

Entered this ____ day of _____, 2021

Hon. William I. Arbuckle
United States Magistrate Judge

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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Plaintiffs,	:	Civ. Action No.:
	:	1:21-CV-01288-WIA
-against-	:	(Arbuckle, M.J.)
	:	
NICHOLAS TURNER, ET AL.,	:	--Electronically Filed--
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Defendants.	:	

**MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL
PROCEDURE 12(B)(1) AND 12(B)(6)**

Defendant the United Federation of Teachers, Local 2, AFT, AFL-CIO (“UFT Defendant” or “UFT”), by its undersigned counsel and based on the Memorandum of Law to be filed hereafter pursuant to Local Rule 7.5, respectfully moves the Court to dismiss Plaintiffs’ September 15, 2021 Amended Complaint (“Amended Complaint”) pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, and Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted.

The motion is based on several grounds. First, federal courts do not have subject matter jurisdiction over duty of fair representation claims involving public employees. *Manfredi v. Hazleton City Auth. Water Dep’t*, 793 F.2d 101 (3d Cir. 1986). Second, any purported duty of fair representation raised by Plaintiff Ella

Card, a former schoolteacher of the Board of Education of the City School District of the City of New York, is governed by New York State Civil Service Law § 200 *et. seq.*, and is within the exclusive jurisdiction of the New York State Public Employment Relations Board. *Zuckerman v. Bd. of Educ. of City Sch. Dist. of City of New York*, 44 N.Y.2d. 336, 342 (1978). Third, Plaintiffs' Amended Complaint fails to state a cause of action upon which relief may be granted since Plaintiffs have failed to allege conduct that was arbitrary, discriminatory, or in bad faith, as to Plaintiff Ella Card as required by federal law. *Vaca v. Sipes*, 386 U.S. 171 (1967). Fourth, Plaintiff Swenson, Plaintiff C. Card, Plaintiff L. Card and Plaintiff F. Card have failed to set forth any allegations that could be construed as any cognizable legal constitutional or statutory claim against UFT Defendant. Fifth, Plaintiffs also have not set forth a viable New York State duty of fair representation claim because Plaintiffs cannot allege or prove that all UFT members ratified the decision not to fully or properly represent Plaintiff Ella Card. *Martin v. Curran*, 303 NY 276 (1951) Fifth, Plaintiffs' Amended Complaint is untimely since Plaintiffs failed to bring a duty of fair representation claim under the requisite four-months statute of limitations under New York State law. *Williams v. New York City Housing Auth.*, 458 F. 3d 67, 69 (2d Cir. 2006) (citing N.Y. C.P.L.R. § 217(2)(a)).

For the foregoing reasons, and as more fully expounded in the Memorandum of Law in Support of Its Motion to Dismiss, UFT Defendant respectfully requests

that the Amended Complaint in this matter be dismissed, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), with prejudice.

Dated: New York, New York
October 27, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2021, I electronically filed the foregoing Entry of Appearance and Memorandum of Law with the Clerk of the Court using CM/ECF. I also certify that the foregoing documents are being served this day on all counsel of record or *pro se* parties identified below in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing electronically.

Dated: New York, New York
October 27, 2021

Respectfully submitted,

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Defendants.	:	

UFT DEFENDANT’S CERTIFICATE OF CONCURRENCE

Pursuant to the July 23, 2021, Standing Practice Order in Pro Se Plaintiff Cases of the United States District Court for the Middle District of Pennsylvania and in particular Rule 7.1 therein, I certify that on October 13, 2021 and on October 18, 2021, I attempted to seek concurrence for UFT Defendant’s Motion to Dismiss from each named party in the Amended Complaint at the mailing and e-mail addresses included in the Amended Complaint.

Pro se Plaintiff Ken Swenson denied his concurrence with the relief sought in the Motion via e-mail on October 20, 2021.

Defendant Raymond Card granted his concurrence with the relief sought in the Motion via e-mail on October 15, 2021. Defendant Progressive General Contractors granted its concurrence with the relief sought in the motion via phone on October 18, 2021.

No other Defendant or other *pro se* Plaintiff responded to UFT Defendant's attempt to seek their concurrence.

Dated: New York, New York
October 27, 2021

Respectfully submitted,

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